16-874

No.



IN THE

# Supreme Court of the United States

JUDITH GOLDMAN; KENNETH B. GOLDMAN, PETITIONERS

*v.*

CITIGROUP GLOBAL MARKETS INC.; FINRA; FREDERICK PIERONI; BARRY GUARIGLIA

*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

## PETITION FOR WRIT OF CERTIORARI

RICHARD J. GERACE

*Gerace Law Office*
*1515 Market St.*
*Suite 1200*
*Philadelphia, PA 19102*
*(215) 854-6345*

MARINA TRAMONTOZZI
*Counsel of Record*

*40 Country Club Rd*
*N. Reading, MA 01864*
*mtramontozzi@tramontlaw.com*
*978-664-1671*

CURRY & TAYLOR ♦ 202-393-4141

## QUESTIONS PRESENTED

In a case interpreting the Federal Arbitration Act ("FAA"), the Supreme Court held in *Vaden v. Discover Bank*, 556 U.S. 49, 53 (2009), "A federal court may 'look through' a §4 petition and order arbitration if, 'save for [the arbitration] agreement,' the court would have jurisdiction over 'the [substantive] controversy between the parties.'" Just weeks apart the Second and Third circuit courts of appeal issued conflicting rulings over whether a district court may "look through" a §10 motion to vacate an arbitration award. The Second Circuit held that a district court "**may**" while the Third Circuit in this case held the district court "**may not**".

Notwithstanding jurisdiction over the underlying claims in this case under 28 U.S.C. § 1331 and 15 U.S.C. §78a, jurisdiction nonetheless existed on the face of the petition itself by virtue of the doctrine of "manifest disregard of law" which the court disregarded.

Thus, this case presents a split among circuits as to whether the FAA permits a "look through" §10 petitions, and whether "manifest disregard of law" is applicable for unique circumstances such as here and generally as a check on appalling conduct by arbitrators.

**The questions presented are:**

(1) Is a petitioner seeking to vacate an arbitration award under FAA §10 entitled to the same "look through" analysis in district court to ascertain federal jurisdiction as a §4 petitioner seeking to compel arbitration?

(2) Does federal subject matter jurisdiction arise solely under the doctrine of manifest disregard of law where a motion to vacate shows arbitrators who professed expertise in margin law yet declare, "there was no margin call" disregard the law and facts that prove an unwarned, mandatory margin call occurred in Petitioners' account by operation of law under 15 U.S.C. § 78g in November 2008 causing devastating damages?

## PARTIES TO THE PROCEEDING

Petitioners are Kenneth and Judith Goldman, husband and wife, the Appellants below, Plaintiffs in the District Court, and Claimants in the underlying FINRA arbitration.

Respondents are Citigroup Global Markets Inc., Morgan Stanley Smith Barney, and stockbroker Barry Guariglia (collectively referred to here as "CGMI").

- Citigroup merged with Morgan Stanley during the financial crises of the late 2000s; stockbroker Guariglia was a licensed, registered representative of both Citigroup and Morgan Stanley during the relevant time period. For ease of reference all are referred to here as CGMI since the parties are represented by the same attorneys.

## TABLE OF CONTENTS

# TABLE OF AUTHORITIES

Page

CASES



STATUTES

**REGULATIONS**

Petitioners respectfully request a writ of certiorari to review and reverse the judgment of the United States Court of Appeals for the Third Circuit.

## OPINIONS BELOW

The precedential decision of the Third Circuit Court of Appeals is reported at 834 F.3d 242 (3d Cir. Pa. 2016) and is reprinted in the Appendix to the Petition ("App.") at App. 1a – 30a. The district court's opinion is reported at 2015 U.S. Dist. LEXIS 65063 (E.D. Pa., May 19, 2015) and is reprinted at App. 31a – 46a.

## JURISDICTION

The jurisdiction of the District Court for the Eastern District of Pennsylvania was invoked under 9 U.S.C. § 10, 15 U.S.C. § 78a, and 28 U.S.C. § 1331. The jurisdiction of the Third Circuit Court of Appeals was invoked under 28 U.S.C. § 1291. The court of appeals issued its decision on August 22, 2016. App. 1a – 30a. A timely petition for rehearing and rehearing en banc was denied on September 26, 2016. App. 47a – 48a. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

## RELEVANT PROVISION INVOLVED

9 U.S. Code § 10 provides in relevant part:

> a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating

> the award upon the application of any party to the arbitration—
> (1) where the award was procured by corruption, fraud, or undue means;
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; ...
> (b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

9 U.S. Code § 10(a) (1) – (3) (1925) amended and enacted by act July 30, 1947, ch. 392, §□1, 61 Stat. 669; amended 1990.

9 USCS § 4 provides in relevant part:

> § 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination
> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28 [28 USCS §§ 1 et seq.], in a civil action or

> in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement.
> 9 USCS § 4 (Act Feb. 12, 1925, ch 213, § 4, 43 Stat. 883) (§4 of former Title 9). (July 30, 1947, ch 392, § 1,61 Stat. 671; Sept. 3, 1954, ch 1263, § 19, 68 Stat. 1233.)

Securities Exchange Act of 1934 provides in relevant part:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, (a) § 240.10b-5(a) To employ any device, scheme, or artifice to defraud, (b) § 240.10b-5(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or(c)§ 240.10b-5(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*, Rule 10b-5, 17 C.F.R. § 240.10b-5 17 CFR 240.10b-5 as amended at 16 FR 7928, Aug. 11, 1951

28 U.S.C. § 1331 provides in relevant part:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1331 (1980)

12 CFR 220.12 (through the statutory authority of 15 U.S.C. 78g) during the relevant time period states in relevant part:

> "The required margin for each security position held in a margin account shall be as follows: (a) Margin equity security, except for an exempted security, money market mutual fund or exempted securities mutual fund, warrant on a securities index or foreign currency or a long position in an option: 50 percent of the current market value of the security or the percentage set by the regulatory authority where the trade occurs, whichever is greater."

12 CFR 220.12 Supplement: Margin requirements (through the statutory authority of 15 U.S.C. 78g, Reg. T, 63 FR 2806, 2827, Jan. 16, 1998; effective July 1, 1998.

## Introduction

The FAA was first passed in 1925 in support of a national policy favoring arbitration. The Act provides rights, remedies and protections for those waiving the right to trial and choosing instead arbitration according to a written arbitration clause. Arbitration

clauses permeate commercial and consumer life through cell phone contracts, credit card agreements, and as here in this case, investment and brokerage account agreements. Virtually every licensed financial services firm requires mandatory arbitration in the FINRA forum.[1] The FAA provides protections for those victimized by fraud, bias, evident partiality or other misconduct by arbitrators under §10.

There is relatively little legislative history concerning the FAA and where there is history there is scant mention of §10. Therefore, the statutory language is of course the primary source of the law governing §10 along with Supreme Court interpretations and the judicially created doctrine of manifest disregard of law.

Unarguably, the FAA does not currently provide or "enlarge federal-court jurisdiction ... a conclusion the Supreme Court has expressly forbidden [federal courts] to draw." *Doscher v. Sea Port Grp.* 832 F.3d 372, 383-384 (2d Cir. N.Y. 2016). The Supreme Court however, in *Vaden v. Discover Bank*, 556 U.S. 49, 53 (2009) goes beyond the actual text of FAA §4 to "agree with the Fourth Circuit in part. A federal court ***may 'look through'*** a § 4 petition and order arbitration if, 'save for [the arbitration] agreement,' the court would have jurisdiction over 'the [substantive] controversy between the parties'". Thus, the Supreme Court allows a "look through" a petition to compel arbitration in order to enforce rights under the FAA. That sound reasoning has however

---

[1] FINRA the "Financial Industry Regulatory Authority" is a "self-regulatory organization" registered under section 15A of the Exchange Act, 15 U.S.C. § 78o-3, and subject to oversight under section 19 of the same act.

irreconcilably divided the circuit courts of appeal as to petitioners seeking rights under §10. Consequently. a split among the circuits has developed as to whether rights under §10 are equal to rights under §4.

Weeks apart, the Second Circuit held that a district court "***may***" conduct the same "***look through***" a §10 petition to ascertain federal jurisdiction while the Third Circuit in this case held the district court "***may not***". The Third Circuit joins the Seventh and DC Circuit prohibiting any look through to underlying claims requiring district courts to restrict consideration of federal jurisdiction to the text of the motion itself.

These diametrically opposed holdings based on the exact same statutory language and Supreme Court interpretation of rights under FAA §4 shows there is no unified judicial understanding or application of a federal law that affects virtually every investor in America if not every consumer in America. Thus, Supreme Court clarification of rights under the FAA and resolution of the split among circuits is necessary to the integrity of the courts.

Aside from the irreconcilable split among circuits, had the district court "looked through" the Goldmans' §10 motion, it would have found the underlying arbitration claims based, as the Third Circuit accurately reported, on "the Securities Exchange Act of 1934 (the "'34 Act"), 15 U.S.C. § 78a *et seq.*, and Rule 10b-5, 17 C.F.R. § 240.10b-5" (App. 3a). Therefore, the necessary "independent jurisdictional basis" under 28 U.S.C. § 1331 exists.

Whether or not a district court may or may not "look through" a §10 Petition, the Goldmans still raised federal question jurisdiction on the face of the motion by demonstrating manifest disregard of federal margin

laws and attendant 10b-5 violations by arbitrators who declared expertise in margin law yet refused to regard evidence and arithmetic proving that an unwarned margin call arose by operation of law under 15 USC § 78 thus precipitating the federal law claims stated in the arbitration complaint. There were no state law claims presented and no counterclaims or cross claims.

## STATEMENT

Sometime in the 1990s, Judith and Kenneth Goldman began a financial advisory relationship with Guariglia who at the time was a licensed stockbroker with Merrill Lynch. In November 2008, Guariglia quit Merrill Lynch to join CGMI just as Merrill Lynch was about to collapse along with the rest of the financial industry during the financial crisis. While giants of the financial industry lobbied for survival and government bail-outs, Guariglia left Merrill Lynch for CGMI and convinced the Goldmans to transfer their accounts to go with him.

That advice had catastrophic consequences for the Goldmans as Guariglia and CGMI failed to warn the Goldmans that they would be subject to an instantaneous margin call upon CGMI's receipt of the Goldmans' securities from Merrill Lynch. Under the margin laws, the Goldmans were subject to the lower "maintenance" margin requirements at Merrill Lynch as existing customers. However, by transferring their accounts to CGMI, they were considered "new customers" subjected to higher margin requirements as if they had just purchased the transferred securities on date of transfer.

On the date of transfer, the value of the securities was less than 50% of their original purchase

price as account statements show thus triggering an instantaneous margin call by operation of law under 15 U.S.C. 78g and 12 CFR 220.12 which forced the liquidation of the Goldmans securities necessary to cover the call. *Id.*, ("The required margin for each security position held in a margin account ***shall be as follows***: (a) Margin equity security ... 50 percent of the current market value of the security"). (Emphasis added.)

Because of the resulting damages, the Goldmans filed their Statement of Claims or Complaint in the mandatory FINRA forum against Guariglia, Merrill Lynch and CGMI.

As a FINRA member firm, in the safe harbor of FINRA arbitration and before FINRA arbitrators, CGMI was allowed to deny the existence and application of inescapable margin laws and the existence of the automatic, computer generated margin call in November 2008. Were it not for the intrepid George Batelli, Guariglia's honest supervisor who unilaterally produced hard copies of his electronic supervisory notes pertaining to the margin call just days before he was scheduled to testify, the corruption and collusion by these particular arbitrators with CGMI would remain concealed.

Indeed, the Goldmans demanded sanctions based on the Batelli revelations for which the flummoxed panel suspended the hearings to purportedly consider sanctions. Yet the hearings were reconvened without any sanctions at all or requirement that CGMI produce the rest of that fundamental discovery.

Thus, the single most egregious example of the arbitrators' manifest disregard of law is the arbitrators' boast that "This is a very experienced panel. We're all familiar with margin debt. We do

understand how it works". Yet those arbitrators, despite documentary proof of an unwarned margin call arising by operation of law with devastating effect simply declared, "There was no margin call" despite account statements, arithmetic and the law that proves there was and the attendant 10b-5 violations.

By agreement among the parties, the entire arbitration proceedings, from the initial pre-arbitration conferences to the actual arbitration hearings, and the making of the award, occurred in Philadelphia, PA. As is typical in FINRA arbitrations, an initial teleconference is conducted by the arbitrators with the parties. From this very first conference, the arbitrators appeared openly hostile to the Goldmans and openly threatened the Goldmans with default pertaining to discovery demands by CGMI. Because of that open hostility, all proceedings thereafter were transcribed by local court reporters.

The pre-hearing discovery process appeared deliberately oppressive to the Goldmans but permissive to CGMI. For example, the aged Goldmans were compelled to produce ten years of all of their brokerage account statements, ten years of federal and state tax returns, the irrelevant records of Kenneth Goldman's deceased aunt including her Will, outdated and irrelevant Prudhoe Bay class action documents, personal accounting information and most appalling of all personal health and medical information for no reason but to humiliate Kenneth and Judith Goldman.

This abusive conduct was wholly one-sided as the Panel denied the Goldmans the most basic discovery. For instance, despite demands for electronic records and emails, CGMI produced a grand total of three (3) emails for the entire time period that the Goldman accounts were with CGMI and no electronic records

whatsoever. Were it not for the intrepid George Batelli, the existence of electronic records would remain concealed.

As for the arbitration hearings, the Panel refused to allow the Goldmans a full complement of witnesses even refusing to allow their expert witness to observe the proceedings although allowing CGMI's expert to sit through the entire proceedings.

At the close of the Goldmans case, the arbitrators refused to allow the Goldmans a closing argument. CGMI of course presented the arbitrators with a motion to dismiss which the Panel granted on April 28, 2014. Accordingly, the Goldmans filed a motion to vacate the arbitration award in "the United States court in and for the district wherein the award was made" pursuant to FAA §10 seeking to vacate the award in favor of CGMI because the award was "procured by corruption, fraud, or undue means ... evident partiality or corruption in the arbitrators ... refusing to hear evidence pertinent and material to the controversy [and for] misbehavior by which the rights ... have been prejudiced. FAA §10((a)(1) – (3).

However, CGMI filed a motion to stay or dismiss that petition until the Panel issued a "final" award which had merely to decide whether to expunge Guariglia's record. The court granted the stay and advised the parties that the Goldmans were to "refile" their motion to vacate upon the Panel's issuance of a final award.

It took the Panel five months to decide CGMI's petition to expunge Guariglia's record which they denied in their "final" award issued October 1, 2014. Accordingly, the Goldmans refiled their May 28, 2014 Motion to Vacate. The "refiled" Motion to vacate is the operative document in this case and on appeal.

CGMI again responded with a motion to dismiss the Goldmans' "Refiled Motion to Vacate due to lack of subject matter jurisdiction. On May 19, 2015, the district court granted CGMI's motion to dismiss finding that the court lacked subject matter jurisdiction to decide the Goldmans motion to vacate. App. 31a – 45a.

The Goldmans appealed to the Third Circuit Court of Appeals which conducted oral argument and then later directed the parties to specifically address the Third Circuit's prior holding *in Goldman Sachs v. Athena Venture*, 803 F.3d 144 (3d Cir. 2015) at Fn 5 where a Third Circuit panel recognized district court jurisdiction "pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 78aa(a) because the underlying arbitration included federal securities law claims".

While the district court and Third Circuit in *Athena Venture* readily allowed those two billionaire parties instant access to the federal forum, the district court and Third Circuit denied that same access to the Goldmans calling the *Athena Venture*'s adjudication "drive by" jurisdiction.

Thus, a mere three judge panel of the Third Circuit overruled a prior three judge panel holding henceforth, "a district court may not look through a § 10 motion to vacate to the underlying subject matter of the arbitration in order to establish federal question jurisdiction." App. 19a.

The Goldmans petitioned the Third Circuit for rehearing. The petition was denied. App 47a – 48a. The Goldmans filed a "Motion for Reconsideration of the September 26, 2016 Order Denying Appellants' Petition for En Banc and Panel Rehearing" but the Third Circuit refused to accept the Motion. Thus, the

Goldmans petition this Honorable Court for a Writ of Certiorari.

The petition for certiorari seeks review and reversal of the Third Circuit holding that "a district court ***may not*** look through a § 10 motion to vacate" and adoption of the Second Circuit holding in *Doscher v. Sea Port Grp.* that "[F]ederal courts ***may*** 'look through' § 10 petitions, applying the ordinary principles of federal-question jurisdiction to the underlying dispute as defined by *Vaden.*" 832 F.3d 372, 383-384 (2d Cir. N.Y. 2016).

In addition, Petitioners seek review of the Third Circuit's ruling that refused to consider Petitioners' claims for application of the doctrine of manifest disregard of law, as articulated on the face of the motion to vacate.

## REASONS FOR GRANTING THE PETITION

Certiorari should be granted to resolve a direct conflict between the Third Circuit's holding in this case, which accords with the Seventh, Ninth, and D.C Circuit Courts of Appeal in holding that "a district court ***may not look through*** a § 10 motion to vacate to the underlying subject matter of the arbitration in order to establish federal question jurisdiction" *versus* the enlightened holding of the Second Circuit just weeks earlier that "a federal district court faced with a § 10 petition ***may 'look through'*** the petition to the underlying dispute, applying to it the ordinary rules of federal-question jurisdiction and the principles laid out by the majority in *Vaden* [556 U.S. 49 (2009)]." ***Compare*** *Doscher*, 832 F.3d 372, 388 (2d Cir. N.Y. 2016) ***with*** *Goldman v. Citigroup Global Mkts., Inc.*, 834 F.3d 242, 255 (3d Cir. 2016) (App. 19a); *Magruder*

*v. Fid. Brokerage Servs. LLC*, 818 F.3d 285, 287 – 288 (7th Cir. Ill. 2016); *Carter v. Health Net of Cal., Inc.*, 374 F.3d 830, 835 (9th Cir. Cal. 2004) ("§ 10 of the FAA ... does not create federal question jurisdiction 'even when the underlying arbitration involves a federal question.'"); *Kasap v. Folger Nolan Fleming & Douglas, Inc.*, 166 F.3d 1243, 1247 (D.C. Cir. 1999) ("§ 10 does not create federal question jurisdiction, even when the underlying arbitration involves federal law".) (Emphasis added.)

In *Vaden*, 556 U.S. at 62 – 65, the Supreme Court held that "a district court ***should look through*** a [Federal Arbitration Act ("FAA")] §4 petition" to compel arbitration to consider whether the court "would have [federal-question] jurisdiction" over "a suit arising out of the [underlying] controversy" between the parties. (Emphasis added.) In *Doscher*, the Second Circuit decided that the FAA affords those abused by arbitration that same rights as those who wish to compel it. 832 F.3d 372, 388.

Thus rights, remedies and protections under the FAA are afforded individuals in one circuit but denied in others calling into question the integrity of judicial interpretation of plain language statutes and Supreme Court reasoning on the FAA.

Because arbitration agreements are ubiquitous, particularly for those investing in the stock market, this law must be declared and the split resolved.

Aside from this irreconcilable split among circuits, had the district court "looked through" the Goldmans' §10 motion to vacate to the underlying arbitration claims, the court would have found federal question jurisdiction under 28 U. S. C. §1331, the '34 Act, 15 U.S.C. § 78a *et seq.*, and Rule 10b-5. *See Merrill Lynch v. Manning*, 136 S. Ct. 1562, 1566 (2016) ("[T]he

jurisdictional test established by [Section 27 of the Securities Exchange Act of 1934 ... 15 U. S. C. §78a] is the same as the one used to decide if a case 'arises under' a federal law. *See* 28 U. S. C. §1331.")

Moreover, on the face of the motion itself, the Petitioners raised federal question jurisdiction by demonstrating manifest disregard of federal margin laws by arbitrators who boast expertise in margin law, yet refused to regard evidence and arithmetic proving that an unwarned margin call arose by operation of law under 15 U.S.C. 78g causing the Goldmans to suffer catastrophic damages to their investments. See, 12 CFR 220.12 ("The required margin for each security position held in a margin account ***shall be as follows***: (a) Margin equity security ... 50 percent of the current market value of the security").

Because there is no discretion allowed a financial firm regarding federally mandated margin calls, there is no question whatsoever that that margin call occurred. *Id.* Consequently, there is no question that the arbitrators who boasted about their expertise, yet declared, "there was no margin call" manifestly disregarded the existence of law and the triggering factor that caused the damages upon which the Goldmans sought arbitration. App. 6a.

That manifest disregard of law also demonstrates the evident partiality or outright corruption of arbitrators in this case if the conduct of the hearings as explained in the above Statement of the Case does not. *Kaplan v. First Options of Chi., Inc.*, 19 F.3d 1503, 1523 n.30 (3d Cir. 1994) and *Freeman, v. Pittsburgh Glass*, 709 F.3d 240, 253 (3d Cir. 2013) ("[W]e take this opportunity to reaffirm what we said in Kaplan. An arbitrator is evidently partial only if a reasonable person would have to

conclude that she was partial to one side. *Id.* The conclusion of bias must be ineluctable, the favorable treatment unilateral.")

If manifest disregard of law has any remaining validity, that validity exists in this case. Whether the face of the motion adequately demonstrates manifest disregard of law, appears unquestionable. Yet, the manifest disregard claims are entirely ignored by a Third Circuit panel who agreed with the district court that the Goldmans' motion "is insufficient to raise a substantial question of federal law in their motion to vacate." App. 21a. That the Goldmans' motion somehow failed to "principally and in good faith [assert] that the award was rendered in manifest disregard of federal law" given its clear language appears an abuse of discretion and error of law requiring reversal and remand.

Most disturbing, the Third Circuit characterizes the Goldmans' motion to vacate as a "run-of-the-mill arbitration dispute" undeserving of the Court's time or the law's protections:

> The substantiality inquiry ... looks ... to the importance of the issue to the federal system as a whole." *Gunn*, 133 S. Ct. at 1066. It "primarily focuse[s] not on the interests of the litigants themselves, but rather on the broader ***significance ... for the Federal Government.***" *Id.* The Goldmans raise a routine claim for vacatur ...[.] Unlike the NASDAQ case, which implicated the proper functioning of a major national securities exchange, ***nothing about the Goldmans' case is likely to affect the securities markets more broadly.*** ... Accordingly, we decline to recognize federal

question jurisdiction[.] APP. 25a. (Emphasis added.); *see also* App. (FN 14) ("[T]he Goldmans' claims are not nearly as substantial for jurisdictional purposes as those in the NASDAQ case.")

Lost on the Third Circuit is the fundamental principal of government of, by, and for the People, and upon which the Second Circuit grounds its holding in *Doscher* ("[I]f Congress cared only about enforcing arbitration or its results, it could have ended the Act after § 9. Instead, it also provided remedies of vacatur and modification in §§ 10 and 11, albeit on exclusive and narrow grounds sounding in basic fairness and due process'"). 832 F.3d at 386.

In the Second Circuit Judith and Kenneth Goldman clearly enjoy rights "sounding in basic fairness and due process". *Id.* In the Third Circuit an impartial reading of the Goldman opinion indicates there is certainly consideration for the "fairness and due process" due the likes of NASDAQ OMX Group, Inc., and UBS but little for Judith and Kenneth Goldman.

The Second Circuit's understanding of the FAA is therefore more consonant with the Supreme Court's interpretation of rights and remedies for all parties subjected to arbitration. Accepting as it must, "the Supreme Court's longstanding conclusion that the Act 'bestows no federal jurisdiction but rather requires for access to a federal forum an independent jurisdictional basis over the parties' dispute'" the Second Circuit construes the language of §10 "as authorizing the ***availability*** of the remedies rather than controlling jurisdiction over the dispute, is [ ] a more consistent interpretation of the statute as a whole". *Doscher* 832

F.3d at 385 (emphasis added) citing *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991) and *Vaden*, 556 U.S. at 59 ("[A] statute is to be read as a whole, since the meaning of statutory language, plain or not, depends on context ... —not to mention being in full accordance with the Supreme Court's characterization of the Act as having a "nonjurisdictional cast". )

Adhering to the directive in *Vaden* that the FAA "'enlarg[es] the range of remedies available in the federal courts[,] ... not extend[s] their jurisdiction'" the Second Circuit in *Doscher* recognized, "The 'independent jurisdictional basis' in *Vaden* ..., was federal-question jurisdiction deriving from § 1331 ... conclu[sion] that the 'dispute' giving rise to § 1331 jurisdiction was the 'substantive conflict between the parties.'"*Vaden*, 556 U.S. at 63.

Here, the Goldmans claims were solidly based on federal law, not through artful dodging but because the violations by CGMI were fundamentally violations of federal securities law that could have been filed in federal court "'save for [the arbitration] agreement".[2] Here, "the basic rules of federal-court jurisdiction" were followed. *See e.g., Vaden* at 79 (Roberts, C.J., concurring in part and dissenting in part) (explaining that the Act 'enlarg[es] the range of remedies available in the federal courts[,] ... ***not extend[s] their jurisdiction***')." (Emphasis added.)

Allowing a look though of a §10 petition extends jurisdiction no more than the look through a §4 petition. *See also id.*, ("Artful dodges by a § 4

[2] The phrase "save for [the arbitration] agreement" indicates that the district court should assume the absence of the arbitration agreement and determine whether it "would have jurisdiction under title 28" without it. There would be no difference in a §10 petition. *Vaden* at 62 – 63.

petitioner should not divert us from recognizing the actual dimensions of th[e] underlying controversy. ... it does not give § 4 petitioners license to recharacterize an existing controversy, or manufacture a new controversy, in an effort to obtain a federal court's aid in compelling arbitration."

That most of the circuits disagree with the Second Circuit's holdings is a disturbing recognition that most circuits are unaware of "basic fairness and due process" where the FAA is concerned. That resistance or outright rejection is no different than the circuit court's blindness to the meaning of the FAA as the *Vaden* court held. *Vaden*, at 63 ("The majority of Courts of Appeals to address the question, we acknowledge, have rejected the 'look through' approach entirely, as Vaden asks us to do here").

Moreover, there is absolutely "no indication that Congress intended something else to govern jurisdiction in petitions under the rest of the Act, and—to the contrary—Supreme Court precedent precludes us from so [other than 28 U.S.C. 1331]." *Doscher* at FN 20.

Allowing a look through in § 10 petitions would do no different. *Id.*

For now, there is a lack of enlightenment in Third Circuit's view of individual rights due the Goldmans under the FAA either on the face of their motion to vacate or by looking through it.

This petition for certiorari therefore is submitted seeking reversal of the Third Circuit holding that "a district court ***may not*** look through a § 10 motion to vacate" and adoption of the Second Circuit's holding in *Doscher*, that "[F]ederal courts ***may*** 'look through' § 10 petitions, applying the ordinary principles of federal-question jurisdiction to

the underlying dispute as defined by Vaden." ***Compare*** *Goldman v. Citigroup*, 834 F.3d at 255 (3d Cir. 2016) ***with*** *Doscher*, 832 F.3d at 372.

In addition, Petitioners seek recognition and application of the doctrine of manifest disregard of law as sufficiently articulated on the face of the motion to vacate the arbitration award.

## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

RICHARD J. GERACE
*Gerace Law Office*
*1515 Market St.*
*Suite 1200*
*Philadelphia, PA 19102*
*(215) 854-6345*

MARINA TRAMONTOZZI
*Counsel of Record*
*40 Country Club Rd*
*N. Reading, MA 01864*
*978-664-1671*